

1 JOHN L. BURRIS, Esq./ State Bar #69888
2 BENJAMIN NISENBAUM, Esq./State Bar #222173
3 LAW OFFICES OF JOHN L. BURRIS
4 Airport Corporate Centre
5 7677 Oakport Street, Suite 1120
6 Oakland, California 94621
7 Telephone: (510) 839-5200
8 Facsimile: (510) 839-3882
9

10
11 MICHAEL J. HADDAD, Esq./ State Bar #189114
12 JULIA SHERWIN, Esq./ State Bar #189268
13 HADDAD & SHERWIN
14 505 Seventeenth Street
15 Oakland, CA 94612
16 Telephone: (510) 452-5500
17 Facsimile: (510) 452-5510
18

19 Attorneys for Plaintiffs

20 UNITED STATES DISTRICT COURT
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA
22

23 DAVID WARD; JAMES TYSON; MARK
24 ENGRAM; MICHAEL HOLMES; RICHARD
25 RIX; TONY ARMSTRONG;

26 Plaintiffs,

27 vs.

28 CITY OF OAKLAND, a municipal corporation;
WAYNE TUCKER, in his capacity as Chief of
Police for the CITY OF OAKLAND;
BRADLEY BAKER, individually and in his
capacity as a police officer for the CITY OF
OAKLAND; RICHARD VASS, individually
and in his capacity as a police officer for the
CITY OF OAKLAND; T. MORK, individually
and in his capacity as a police officer for the
CITY OF OAKLAND; , individually and in her
capacity as a police officer for the CITY OF
OAKLAND; and, DOES 1-25, inclusive,

Defendants.

Case No. C 07 04179 TEH

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATION OF CIVIL
RIGHTS.
JURY TRIAL DEMANDED**

JURISDICTION

1
2 1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction
3 is conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1343. The
4 unlawful acts and practices alleged herein occurred in the County of Alameda, California, which is
5 within this judicial district.
6

7 PARTIES

8 2. Plaintiff herein, DAVID WARD (“WARD”), is readily recognizable as an African-
9 American male and was at all times herein mentioned a citizen of the United States residing in
10 Alameda County in California.

11 3. Plaintiff herein, JAMES TYSON (“TYSON”), is readily recognizable as an African-
12 American and was at all times herein mentioned a citizen of the United States residing in Alameda
13 County in California.

14 4. Plaintiff herein, MARK ENGRAM (“ENGRAM”), is readily recognizable as an
15 African-American and was at all times herein mentioned a citizen of the United States residing in
16 Alameda County in California.

17 5. Plaintiff herein, MICHAEL HOLMES (“HOLMES”), is readily recognizable as an
18 African-American and was at all times herein mentioned a citizen of the United States residing in
19 Alameda County in California.

20 6. Plaintiff herein, RICHARD RIX (“RIX”), is readily recognizable as an African-
21 American and was at all times herein mentioned a citizen of the United States residing in Alameda
22 County in California.

23 7. Plaintiff herein, TONY ARMSTRONG (“ARMSTRONG”), is readily recognizable as
24 an African-American and was at all times mentioned herein a citizen of the United States residing in
25 Alameda County in California.

26 8. Defendant City of Oakland (“CITY”) is a municipal corporation, duly organized and
27 existing under the laws of the State of California. The City operates under its authority the Oakland
28 Police Department.

1 9. At all times mentioned herein, Defendant WAYNE TUCKER (“TUCKER”) was
2 employed by Defendant CITY as Chief of Police for the Defendant CITY. He is being sued in his
3 official capacity as Chief of Police for the City.

4 10. At all times mentioned herein, Defendant officer BRADLEY BAKER (“BAKER”) was
5 employed by Defendant CITY as a police officer. He is being sued individually and in his
6 official capacity as a police officer for the City.

7 11. At all times mentioned herein, Defendant officer RICHARD VASS (“VASS”) was
8 employed by Defendant CITY as a police officer. He is being sued individually and in his official
9 capacity as a police officer for the City.

10 12. At all times mentioned herein, Defendant officer T. MORK (“MORK”) was
11 employed by Defendant CITY as a police officer. He is being sued individually and in his official
12 capacity as a police officer for the City.

13 13. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through
14 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs are informed
15 and believe and thereon allege that each Defendant so named is responsible in some manner for the
16 injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will amend their complaint
17 to state the names and capacities of DOES 1-25, inclusive, when they have been ascertained.

18 14. In engaging in the conduct described herein, Defendant police officers acted under the
19 color of law and in the course and scope of their employment with the City. In engaging in the
20 conduct described herein, Defendant police officers exceeded the authority vested in them as police
21 officers under the United States and California Constitutions and as police officers employed by
22 Defendant CITY.

23 15. Plaintiffs are required to comply with a government code claim requirement for State
24 causes of action. Plaintiffs DAVID WARD and MARK ENGRAM have complied with all
25 requirements.
26
27
28

STATEMENT OF FACTS

FACTUAL ALLEGATIONS REGARDING PLAINTIFF DAVID WARD

16. On December 11, 2006, between 10 and 11 p.m., Plaintiff DAVID WARD, a 35 year-old African-American man, and the son of former "Sweet Jimmy's" nightclub owner James Watts, left his aunt's house located on the 800 block of Milton Street in Oakland, California. Plaintiff WARD drove a Ford pickup truck that was registered in his father's name. Plaintiff possessed a valid driver's license and was not on probation or parole at the time of this incident. Plaintiff had no criminal record and worked for his father, who had recently sold his well-known nightclub located in Oakland, which Plaintiff had managed. Plaintiff had had his wisdom teeth pulled earlier that afternoon and had pain in his jaw.

17. Plaintiff turned onto San Pablo Avenue from his aunt's house and noticed a marked Oakland Police Department vehicle traveling in his direction. After Plaintiff traveled about 2 to 3 blocks on San Pablo, he noticed the siren lights on the police vehicle turn on. Plaintiff pulled over immediately the Oakland Police vehicle stopped behind him. One Oakland Police officer, who Plaintiff alleges is Defendant Officer BRADLEY BAKER, approached Plaintiff's driver's side window and requested Plaintiff's license, registration, and insurance. Plaintiff provided the requested information to Defendant Officer BAKER. Plaintiff asked the officer why he was being stopped, and Defendant Officer BAKER told him it was because he was not wearing a seatbelt. Plaintiff knew that Defendant Officer BAKER's allegation was accurate. Plaintiff was not wearing a seatbelt. Plaintiff provided the requested materials without concern. Plaintiff only expected to be issued a citation.

18. Defendant Officer BAKER ordered Plaintiff to step out of the vehicle. Plaintiff had noticed that Defendant Officer BAKER had not used his radio after Plaintiff provided the papers to the officer. Defendant Officer BAKER ordered Plaintiff to turn around and then handcuffed him. Plaintiff complied with officer and asked him why the officer was handcuffing him. Defendnat

1 Officer BAKER did not respond to Plaintiff's question, but asked Plaintiff if he had any "drugs or
2 weapons". Plaintiff told the officer that he had Tylenol with Codeine in his right front pocket.
3 Plaintiff told Defendant Officer BAKER that he had gotten them from the dentist. The Tylenol with
4 Codeine was sealed in its container. Defendant Officer BAKER conducted a pat search of Plaintiff
5 while Plaintiff stood on the driver's (street) side of his truck. Plaintiff wore blue jeans without a belt
6 and a t-shirt. The street was well-lit.
7

8 19. Defendant Officer BAKER found the pill container Plaintiff had told him about,
9 removed it from Plaintiff's right front pants pocket, and then returned it back to the pocket.
10 Defendant Officer BAKER then stood behind Plaintiff and searched him from behind. To Plaintiff's
11 surprise, Defendant Officer BAKER ran his hand on the outside of Plaintiff's jeans up and down the
12 crack of his buttocks. Plaintiff told the officer: "You know you're not supposed to be doing this!"
13 Defendant Officer BAKER told Plaintiff to be quiet and that he would be done in a minute.
14

15 20. Defendant Officer BAKER walked around to face Plaintiff and pulled Plaintiff's jeans
16 and boxer-briefs forward away from Plaintiff's waist. Defendant Officer BAKER looked down at
17 Plaintiff's exposed genitalia. No contraband was located.
18

19 21. Defendant Officer BAKER sent Plaintiff to his police car where another unknown
20 Oakland Police Officer waited. Plaintiff stood on the sidewalk next to the passenger side of the
21 Oakland Police vehicle. The unknown Oakland Police officer, who was Caucasian, about 6'2",
22 skinny to medium build with glasses, performed a similar search of Plaintiff as Defendant Officer
23 BAKER. The unknown Oakland Police officer searched Plaintiff from the front and used one hand to
24 cup Plaintiff's genitals from outside Plaintiff's jeans. The unknown Oakland police officer pushed
25 Plaintiff's genitals upward from outside of Plaintiff's jeans, and then pulled Plaintiff's jeans and
26
27
28

1 boxer-briefs away from Plaintiff's waist. The unknown officer then looked down at Plaintiff's
2 exposed genitals.

3 22. While the unknown officer performed the second strip search of Plaintiff, Defendant
4 Officer BAKER was inside the police vehicle checking Plaintiff's name for warrants. Plaintiff was
5 clean and the check revealed that Plaintiff was not on probation or parole and had no warrants.
6 Defendant Officer BAKER then thoroughly searched Plaintiff's truck. Again, no contraband was
7 located. Defendant Officer BAKER removed the handcuffs. Plaintiff asked Defendant Officer
8 BAKER why the officers had strip searched him and treated him in such a humiliating manner,
9 Defendant Officer BAKER threatened Plaintiff by telling him "You need to stay away from Milton,
10 or we will get you."
11

12 23. Plaintiff told the officer that his Aunt lived on Milton and that he had friends in the
13 area, that there was no reason for him to stay away. The unknown Caucasian officer told Plaintiff
14 "Why don't you be quiet before you get yourself in trouble!"
15

16 24. Plaintiff left the scene with his jaw still in severe pain. About two days later Plaintiff
17 filed an Internal Affairs complaint with the City of Oakland against the officers regarding this
18 incident.
19

20 25. Subsequently, Defendant Officer BAKER made good on his threats to Plaintiff and
21 falsely arrested him on January 26, 2007. Defendant Officer BAKER alleged Plaintiff possessed rock
22 cocaine for sale. Plaintiff denies the allegation and alleges retaliation against him by Defendant
23 Officer BAKER.
24

25 FACTUAL ALLEGATIONS REGARDING PLAINTIFF JAMES TYSON

26 26. On October 12, 2006, Plaintiff JAMES TYSON rode his niece's bicycle down San
27 Pablo Avenue in Oakland, California. Plaintiff TYSON rode from 32nd Street in Oakland toward a
28 friend's residence located near 14th Street by Jefferson Street in Oakland. Due to the late hour,

1 somewhat before midnight, Plaintiff rode his bicycle on the west sidewalk running parallel to San
2 Pablo Avenue after leaving a Senior Center where his father lived.

3 27. While riding, Plaintiff heard the sound of gunshots and pedaled faster to avoid any
4 potential danger. Shortly after the sound of gunshots, an Oakland Police vehicle pulled alongside
5 Plaintiff and the police vehicle's spotlight turned on directed at Plaintiff. Plaintiff stopped his bicycle
6 and Defendant Officer BRADLEY BAKER stepped out of the police vehicle. Plaintiff pedaled away
7 from Defendant Officer BAKER and within half a block turned left onto Milton Street in Oakland.

8 28. Plaintiff accidentally hit the front brake on the bicycle and fell forward over the
9 bicycle handlebars within about half a block after he turned onto Milton Street. Plaintiff, fearing there
10 was a warrant for his arrest, ran toward bushes in the yard of a house located on Milton Street while
11 Defendant Officer BAKER pursued him. Plaintiff TYSON surrendered to Defendant Officer
12 BAKER, who asked Plaintiff TYSON: "Where's the dope?" Plaintiff TYSON possessed no
13 contraband and told the officer that he did not have any "dope." Defendant Officer BAKER walked
14 Plaintiff TYSON to the sidewalk on Milton Street near where Defendant Officer BAKER's police
15 vehicle was parked.

16 29. Defendant Officer BAKER handcuffed Plaintiff TYSON's hands behind his back and
17 thoroughly searched Plaintiff TYSON's clothing and pockets. Defendant Officer BAKER discovered
18 a small glass pipe in one of Plaintiff TYSON's pockets. Plaintiff TYSON wore pants, a shirt, and a
19 jacket. Without warning, Defendant Officer BAKER pulled Plaintiff TYSON's pants and boxer
20 shorts down to his ankles, exposing Plaintiff TYSON's genitals and buttocks. Plaintiff TYSON was
21 shocked at the public removal of his clothing, exposing his private areas, and objected to Defendant
22 Officer BAKER's actions. Defendant Officer BAKER forcefully bent Plaintiff TYSON forward at
23 the waist and caused Plaintiff TYSON to fall face first onto the sidewalk, with Plaintiff TYSON's
24 head striking a fence that ran next to the sidewalk.

25 30. Plaintiff TYSON, who suffers from asthma, suffered an asthma attack and told
26 Defendant Officer BAKER, through asthma-related wheezing, that he suffered from asthma.
27 Defendant Officer BAKER responded by telling Plaintiff TYSON that he was lying, and poked
28

1 Plaintiff TYSON several times with an object believed to be a flashlight. Plaintiff TYSON moved
2 around on the sidewalk until Defendant Officer BAKER pulled him up off the ground.

3 31. Plaintiff TYSON demanded that Defendant Officer BAKER pull his pants up.
4 Defendant Officer BAKER told Plaintiff TYSON that he was going to jail. He left Plaintiff TYSON
5 standing, handcuffed, with his pants and boxer shorts around his ankles for several minutes before
6 eventually pulling up Plaintiff's boxers and pants. Several other police vehicles arrived and Plaintiff
7 TYSON was taken to Defendant Officer BAKER's police vehicle. Plaintiff TYSON was arrested
8 and transported to Oakland City Jail and was released after several hours. No charges were filed
9 against him.

10 32. Plaintiff alleges, on information and belief, that defendant officers had insufficient
11 information, and no particularized facts, to support their stop, detention, and search of Plaintiff.

12 33. The detention, search, and arrest of Plaintiff described herein was done without any
13 just provocation or cause, proximately causing Plaintiff injuries and resulting damages.

14 34. Plaintiff alleges on information and belief that defendant officers performed the
15 intrusive public strip-search without probable or reasonable cause pursuant to an official or de facto
16 CITY OF OAKLAND policy condoning and/or ratifying such illegal searches.

17 FACTUAL ALLEGATIONS REGARDING PLAINTIFF MICHAEL HOLMES

18 35. On the afternoon of August 16, 2005, Plaintiff MICHAEL HOLMES was outside
19 washing his late 70's model Bonneville in front of a friend's residence near the intersection of 107th
20 Avenue and Pontiac in Oakland, California, when he observed two marked Oakland Police
21 Department vehicles followed by an unmarked "task force" Oakland Police Department vehicle.
22 Plaintiff HOLMES saw Defendant Officers RICHARD VASS and T. MORK in the front of the lead
23 marked police vehicle. Plaintiff HOLMES knew that he had a warrant for his arrest due to
24 outstanding traffic tickets, and also knew Defendant Officers VASS and MORK from previous
25 encounters with them.

26 36. Plaintiff HOLMES ran to the side gate of his friend's residence to avoid detection by
27 Defendant Officer VASS and MORK, but the two officers noticed him, stopped their vehicles, and
28

1 pursued Plaintiff into his sideyard. Defendant Officer VASS deployed O.C. spray against Plaintiff's
2 dogs and then handcuffed Plaintiff.

3 37. Defendant Officer VASS unbuttoned Plaintiff HOLMES' pants and pulled up Plaintiff
4 HOLMES' shirt. Defendant Officer VASS then ran one hand around Plaintiff HOLMES' waistband
5 between Plaintiff's pants and boxer shorts. Defendant Officer VASS then arrested Plaintiff
6 HOLMES on the outstanding warrants.

7 38. In February of 2007, Plaintiff HOLMES was a passenger riding with a friend in the
8 back of a Yukon truck when Defendant Officer VASS, who was driving an Oakland Police
9 Department vehicle, pulled the truck over and ordered only Plaintiff HOLMES to exit the truck.
10 Plaintiff HOLMES was on probation at the time of this stop. A second Oakland Police Department
11 "task force" vehicle pulled up to the scene and Defendant Officer VASS handcuffed Plaintiff
12 HOLMES. Defendant Officer VASS asked Plaintiff HOLMES if he was on probation, and Plaintiffs
13 told Defendant Officer VASS that he was on probation.

14 39. Defendant Officer VASS, who wore no gloves, put one hand past Plaintiff's waistband
15 between his pants and boxer shorts and ran his hand around Plaintiffs buttocks. Defendant Officer
16 VASS then used his hand as a blade and ran his hand, applying substantial pressure, up and down the
17 crack and anus area between Plaintiff HOLMES' buttocks. Plaintiff possessed no contraband and
18 was released at the scene.

19 40. Plaintiff HOLMES alleges, on information and belief, that the defendant officers had
20 insufficient information, and no particularized facts, to support their stop, detention, and search of
21 Plaintiff.

22 41. The detention, search, and arrest of Plaintiff described herein was done without any
23 just provocation or cause, proximately causing Plaintiff injuries and resulting damages.

24 42. Plaintiff alleges on information and belief that defendant officers performed the
25 intrusive public strip-search without probable or reasonable cause pursuant to an official or de facto
26 CITY OF OAKLAND policy condoning and/or ratifying such illegal searches.

FACTUAL ALLEGATIONS REGARDING SEPTEMBER 22, 2005 STRIP SEARCH OF
PLAINTIFFS MICHAEL HOLMES, MARK ENGRAM, AND RICHARD RIX BY DEFENDANT
OFFICER VASS

43. On the morning of September 22, 2005, Plaintiff MICHAEL HOLMES and MARK ENGRAM walked their dogs, which were puppies at the time, along C Street near the intersection of 92 Avenue in Oakland, as they did nearly every morning. They were joined by Plaintiff RICHARD RIX, who was not on probation or parole at the time and who was not walking a dog. The three friends were stopped near 95th Street by Defendant Officer VASS who was in an Oakland Police Department patrol vehicle.

44. Defendant Officer VASS ordered Plaintiff ENGRAM to release the leash that held his puppy (Plaintiff HOLMES' puppy was not attached to a leash), and Plaintiff complied. Defendant Officer VASS handcuffed Plaintiff HOLMES, pat searched him, and placed him in the rear of his police vehicle. Defendant Officer VASS then took each Plaintiff, including Plaintiff ENGRAM, HOLMES, and RIX, separately, to the side of a nearby house. The view of that location was unobstructed from the street. Each Plaintiff was handcuffed, and Defendant Officer VASS performed the same type of search on each Plaintiff, including: Pulling each Plaintiff's pants and boxer shorts down to their knees, exposing Plaintiffs genitals and buttocks. Defendant Officer VASS spread each Plaintiffs buttocks with his hands and visually inspected their anuses.

45. No Plaintiff was in possession of any contraband and all three were released at the scene.

46. Plaintiffs allege, on information and belief, that the defendant officers had insufficient information, and no particularized facts, to support their stop, detention, and search of Plaintiffs.

47. The detention, search, and arrest of each Plaintiff described herein was done without any just provocation or cause, proximately causing each Plaintiff injuries and resulting damages.

48. Plaintiffs allege on information and belief that defendant officers performed the intrusive public strip-search without probable or reasonable cause pursuant to an official or de facto CITY OF OAKLAND policy condoning and/or ratifying such illegal searches.

FACTUAL ALLEGATIONS REGARDING SUBSEQUENT STRIP SEARCH OF PLAINTIFF
RICHARD RIX BY DEFENDANT OFFICER VASS

49. Approximately one month later, a few days after Plaintiff RIX's birthday on October 17, Plaintiff RIX drove his Acura Legend toward his apartment located on C Street near 92nd Avenue in Oakland. As he approached his apartment an Oakland Police Department vehicle pulled in front of the apartment complex's driveway, so Plaintiff RIX pulled into a neighboring driveway waiting for the Oakland Police officer to move his car. At the time, Plaintiff RIX drove without a license and possessed the bill of sale for his vehicle. Defendant Officer VASS, who drove the Oakland Police Department vehicle that blocked Plaintiff's driveway, pulled the police vehicle to a stop behind Plaintiff RIX's Acura.

50. Plaintiff RIX told Defendant Officer VASS that he had no license and requested that Defendant Officer VASS not have his car towed. Defendant Officer told Plaintiff RIX, "we'll see about that."

51. Plaintiff RIX showed Defendant Officer VASS his paperwork for the car and his California Identification card after exiting the car as ordered by Defendant Officer VASS. Defendant Officer VASS handcuffed Plaintiff RIX. As he began to put Plaintiff RIX in the rear of the patrol vehicle, Plaintiff RIX told Defendant Officer VASS that he would not get in the back of the police car until VASS showed him that it was clean and there was no contraband waiting in the back of the police vehicle. Defendant Officer VASS complied with Plaintiff's request and showed him the back of the police vehicle was clean. Plaintiff then complied and sat in the back of Defendant Officer VASS's patrol vehicle.

52. Defendant Officer VASS then took off Plaintiff RIX's shoes. No contraband was located. Defendant Officer VASS then thoroughly searched Plaintiff RIX's Acura, including its trunk, cabin, hood and fusebox. Again no contraband was located.

53. Defendant Officer VASS then removed Plaintiff RIX from the patrol vehicle. He pulled Plaintiff RIX's boxer shorts back and peered down at Plaintiff buttocks. No contraband was located. Defendant Officer VASS then pat-searched Plaintiff RIX. No contraband was located.

1 54. Defendant Officer VASS asked Plaintiff what his name was. Plaintiff told the officer,
2 and Defendant Officer VASS replied by telling Plaintiff “That’s a fine name. That’s my name.” After
3 obtaining Plaintiff’s birthday, Defendant Officer VASS ran Plaintiff’s name on the on-board
4 computer located in the officer’s police vehicle.

5 55. Defendant Officer VASS pushed Plaintiff RIX forward to a set of steps on the side of
6 the front edge of a neighbor’s house. Defendant Officer VASS ordered Plaintiff to “lean forward”,
7 and Plaintiff, who was handcuffed with his hands behind his back, complied. Defendant Officer
8 VASS then pulled Plaintiff’s pants and boxer shorts down below his buttocks. Defendant Officer
9 VASS squatted behind Plaintiff. Without using any gloves, Defendant Officer then spread Plaintiff
10 RIX’s buttocks apart and visually examined Plaintiff’s anus. Again, no contraband was located.
11 Defendant Officer VASS pulled Plaintiff’s pants up, removed the handcuffs, and released Plaintiff at
12 the scene.

13 56. Plaintiff alleges, on information and belief, that the defendant officers had insufficient
14 information, and no particularized facts, to support their stop, detention, and search of Plaintiff.

15 57. The detention, search, and arrest of Plaintiff described herein was done without any
16 just provocation or cause, proximately causing Plaintiff injuries and resulting damages.

17 58. Plaintiff alleges on information and belief that defendant officers performed the
18 intrusive public strip-search without probable or reasonable cause pursuant to an official or de facto
19 CITY OF OAKLAND policy condoning and/or ratifying such illegal searches.

20 FACTUAL ALLEGATIONS REGARDING SUBSEQUENT STRIP SEARCH OF
21 PLAINTIFF MARK ENGRAM BY DEFENDANT OFFICER VASS

22 59. On the afternoon of January 16, 2007, Plaintiff MARK ENGRAM, an African-
23 American man, walked alone down Elmhurst Street from a nearby corner store located at 98th Avenue
24 and E Street in Oakland, California. Plaintiff noticed a marked Oakland Police Department vehicle
25 driving nearby and was not initially concerned by the police vehicle. Plaintiff was not engaged in
26 criminal activity and no objective police officer could reasonably believe otherwise. Plaintiff
27 possessed no contraband or weapons.
28

1 60. Plaintiff noticed that one of the police officers wore a baseball cap and shades. This
2 observation caused Plaintiff immediate consternation. Plaintiff associated the officer wearing the
3 baseball cap and shades with Defendant Officer RICHARD VASS, who had forced Plaintiff to
4 submit to a humiliating public strip search on September 22, 2005, on C Street near 95th Avenue in
5 Oakland. Numerous people witnessed that previous public strip search, in which Defendant Officer
6 VASS indecently exposed three African-American men, including Plaintiffs ENGRAM, HOLMES,
7 and RIX, to public view. No arrests were made in the September 22, 2005 strip search incident.
8

9 61. The marked Oakland Police vehicle pulled to a stop in the street next to Plaintiff, who
10 walked on the sidewalk. To Plaintiff's dismay, Defendant Officer VASS and Defendant Officer
11 MORK exited the police vehicle and began questioning Plaintiff. In a pseudo-friendly tone of voice,
12 Defendant Officer VASS asked Plaintiff: "Hey, how have you been? I haven't seen you in a while?"
13

14 62. Plaintiff told Defendant Officer VASS that he had been working. Defendant Officer
15 VASS ordered Plaintiff to open his mouth. Plaintiff possessed no contraband, and Defendant Officer
16 VASS found no contraband in Plaintiff's mouth. Defendant Officer VASS ordered Plaintiff to turn
17 around, and then Defendant Officer VASS undid Plaintiff's belt. Defendant Officer VASS shook
18 Plaintiff's pants by grabbing Plaintiff's pants from the front. Defendant Officer VASS repeated the
19 procedure by shaking Plaintiff's pants on each side, and then shaking the rear of Plaintiff's pants. No
20 contraband was located.
21

22 63. Defendant Officer VASS then pulled Plaintiff's pants down to his thighs. Although
23 there was no objective basis to conduct any further invasive search of Plaintiff, Defendant Officer
24 VASS, who wore no gloves, put one hand in between Plaintiff's boxer shorts and jeans next to the
25 crack of Plaintiff's buttocks. Defendant Officer VASS then ran his bare hand up and down the crack
26 of Plaintiffs buttocks. Again, Defendant Officer VASS found no contraband.
27
28

1 64. A neighbor witnessed the invasive public search of Plaintiff by Defendant Officer
2 VASS, while Defendant Officer MORK stood by and failed to intervene in the search. Defendant
3 Officer VASS's search, tantamount to a sexual assault and battery, failed to locate any contraband
4 because Plaintiff was not engaged in any illegal activity. Defendant Officer VASS released Plaintiff
5 at the scene. No citations or arrest warrants were issued for Plaintiff.
6

7 65. Plaintiff alleges, on information and belief, that the defendant officers had insufficient
8 information, and no particularized facts, to support their stop, detention, and search of Plaintiff.

9 66. The detention, search, and arrest of Plaintiff described herein was done without any
10 just provocation or cause, proximately causing Plaintiff injuries and resulting damages.

11 67. Plaintiff alleges on information and belief that defendant officers performed the
12 intrusive public strip-search without probable or reasonable cause pursuant to an official or de facto
13 CITY OF OAKLAND policy condoning and/or ratifying such illegal searches.

14 FACTUAL ALLEGATIONS REGARDING PLAINTIFF TONY ARMSTRONG

15 68. On or about August 20, 2005, in the late evening, Plaintiff TONY ARMSTRONG,
16 who had borrowed a friend's vehicle, drove to a corner grocery store located at the corner of 7th
17 Avenue and East 17th Street in Oakland, CA. Plaintiff left the car running while he purchased several
18 items inside the store, including a cold beer among other items. When Plaintiff ARMSTRONG
19 returned to the vehicle from the store he saw four Oakland Police Officers (Defendant Officers DOES
20 1-4, including three Caucasian males and one African American male), dressed in black jumpsuits
21 and examining Plaintiff's friend's vehicle. Plaintiff, who held in his hands a bag containing his
22 purchased items, asked the officers whether there was a problem. One of the Defendant Officers, an
23 older white male officer with a mustache and salt and pepper hair, told Plaintiff that he was not
24 supposed to leave the car running unattended.

25 69. The same older police officer DOE asked Plaintiff whether he had a driver's license.
26 Plaintiff showed the officer his driver's license. Meanwhile, one of the other Defendant Officer
27 DOES retrieved the registration and insurance for the vehicle from its glove compartment. The
28 remaining two Defendant Officer DOES began thoroughly searching the parked vehicle.

1 70. Without warning, the older Defendant Officer DOE who had been speaking with
2 Plaintiff suddenly grabbed Plaintiff's right wrist and twisted Plaintiff's arm behind his back. The
3 sudden action caused Plaintiff to drop the bag of groceries and broke the bottle of beer Plaintiff had
4 bought.

5 71. After the officer finished handcuffing Plaintiff, he asked him what had broken in
6 Plaintiff's bag. Plaintiff told the officer that it was his cold beer. For unknown reasons, the
7 Defendant Officer told Plaintiff that he should not be drinking.

8 72. The unknown tall Defendant Officer bent Plaintiff, who remained handcuffed, over the
9 hood of the vehicle. Plaintiff asked why the officers were searching the vehicle. The only response
10 came from a different Defendant Officer, who told Plaintiff to "shut up," while another Defendant
11 Officer read Plaintiff's name and information over his radio.

12 73. The tall, older Defendant Officer DOE pat searched Plaintiff and removed several
13 items from Plaintiff's pockets, including his wallet, and placed them on the hood of his vehicle. One
14 of the Defendant Officers turned the vehicle's ignition off.

15 74. The tall, older Defendant Officer DOE pulled on Plaintiff's pants until they came
16 down to his knees. Plaintiff remained exposed in his underwear while the officer searched his
17 waistband. Plaintiff's underwear was not pulled down.

18 75. Plaintiff possessed no contraband and Defendant Officers located no contraband. The
19 taller, older Defendant Officer DOE eventually pulled Plaintiff's pants back up and removed his
20 handcuffs. Plaintiff asked the officers what the purpose of the humiliating public strip search was, but
21 the officers provided no response. Plaintiff asked if the officers would pay to replace the broken
22 beer, and one Defendant Officer asked Plaintiff if he was "crazy."

23 76. Plaintiff returned to the corner store and the store clerk asked him why the officers had
24 pulled his pants down. The store clerk replaced the beer and the items damages by the broken beer
25 bottle and Plaintiff left the scene. Plaintiff was not arrested or cited by police.

26 77. The detention, search, and arrest of Plaintiff described herein was done without any
27 just provocation or cause, proximately causing Plaintiff injuries and resulting damages.
28

SECOND CAUSE OF ACTION

(42 U.S.C. section 1983)

(All Plaintiffs Against Defendants TUCKER, CITY OF OAKLAND, DOES 21-25)

84. Plaintiffs hereby reallege and incorporate by reference herein paragraphs 1 through 83 of this Complaint.

85. As against Defendant CITY, TUCKER, and/or DOES 21-25 in his/their capacity as official policy-maker(s) for the CITY OF OAKLAND, Plaintiffs further allege that the acts and/or omissions alleged in the Complaint herein are indicative and representative of a repeated course of conduct by members of the CITY OF OAKLAND Police Department tantamount to a custom, policy or repeated practice of condoning and tacitly encouraging the abuse of police authority, and disregard for the constitutional rights of its citizens.

86. Plaintiffs are further informed and believe and thereon allege that the acts and omissions alleged herein are the direct and proximate result of the deliberate indifference of Defendants CITY, TUCKER, DOES 21-25, and each of them, to repeated acts of police misconduct, including intrusive, humiliating, public strip searches without probable or reasonable suspicion of criminal wrongdoing, which were tacitly authorized, encouraged or condoned by the Defendant CITY, DOES 21-25, and each of them.

87. The injuries and damages to Plaintiffs as alleged herein were the foreseeable and proximate result of said customs, policies, patterns and/or practices of Defendant CITY, TUCKER, DOES 21-25, and each of them.

88. Plaintiffs are further informed and believe and thereon allege that the damages sustained as alleged herein were the direct and proximate result of municipal customs and/or policies of deliberate indifference in the training, supervision and/or discipline of members of the Defendant OAKLAND Police Department..

1 89. Plaintiffs are further informed and believe and upon such information and belief allege
2 that Plaintiffs' damages and injuries were caused by customs, policies, patterns or practices of
3 Defendant CITY, TUCKER, DOES 21-25, and each of them, of deliberate indifference in the
4 training, supervision and/or discipline of Defendants BAKER, VASS, MORK and DOES 1-20,
5 and/or each of them.
6

7 90. The aforementioned customs, policies or practices of Defendant CITY, TUCKER,
8 DOES 21-25, and each of them, resulted in the deprivation of Plaintiffs' constitutional rights
9 including, but not limited to, the following:
10

- 11 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth
12 and Fourteenth Amendments to the United States Constitution;

13 91. Said rights are substantive guarantees under the Fourth and/or Fourteenth
14 Amendments to the United States Constitution.
15

16 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

17 THIRD CAUSE OF ACTION
18 (Assault and Battery)
19 (Plaintiffs WARD and ENGRAM Against Defendant Officers BAKER, VASS, MORK and DOES
20 1-20, inclusive)

21 92. Plaintiffs WARD and ENGRAM reallege and incorporate by reference herein
22 paragraphs 1 through 91 of this Complaint.

23 93. Defendant Officers BAKER, VASS, MORK and DOES 1-20, inclusive, placed
24 Plaintiffs in immediate fear of death, sexual battery, and severe bodily harm, without any just
25 provocation or cause.

26 94. These defendants' conduct was neither privileged nor justified under statute or
27 common law.
28

1 95. As a proximate result of defendants' conduct, Plaintiffs suffered damages as
2 hereinafter set forth.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

4
5 FOURTH CAUSE OF ACTION
6 (Intentional Infliction of Emotional Distress)
7 (Plaintiffs WARD and ENGRAM Against Defendant Officers BAKER, VASS, MORK and DOES
8 1-20, inclusive)

9 96. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 95 of this
10 Complaint.

11 97. The conduct of Defendant Officers BAKER, VASS, MORK and DOES 1-20,
12 inclusive, as set forth herein, was extreme and outrageous and beyond the scope of conduct which
13 should be tolerated by citizens in a democratic and civilized society. Defendants committed these
14 extreme and outrageous acts with the intent to inflict severe mental and emotional distress upon
15 Plaintiffs.

16 98. As a proximate result of Defendants' willful, intentional and malicious conduct
17 plaintiffs suffered severe and extreme mental and emotional distress. Therefore, Plaintiffs are
18 entitled to an award of punitive damages as against said defendants. Plaintiffs have suffered damages
19 as hereinafter set forth.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21
22 FIFTH CAUSE OF ACTION
23 (Violation of Civil Code Section 51.7)
24 (Plaintiff WARD and ENGRAM Against BAKER, VASS, MORK and DOES 1-20, inclusive)

25 99. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 98 of this
26 complaint.

27 100. Plaintiffs are informed and believe and thereon allege that the conduct of Defendant
28 Officers BAKER, VASS, MORK and DOES 1-20, inclusive, as described herein, was motivated by

1 racial prejudice against Plaintiffs. Plaintiffs are and were readily recognizable as African-American.
2 In engaging in such conduct, Defendants violated Plaintiffs' rights under California Civil Code
3 Section 51.7 to be free from violence, or intimidation by threat of violence committed against them
4 because of their race.
5

6 101. Under the provisions of California Civil Code Section 52(b), Defendants are liable for
7 each violation of Civil Code Section 51.7 for punitive damages, an additional \$25,000.00, and for
8 reasonable attorney's fees.

9 102. As a proximate result of Defendants' wrongful conduct, Plaintiffs suffered damages as
10 hereinafter set forth.
11

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 SIXTH CAUSE OF ACTION
14 (Violation of Civil Code Section 52.1)
15 (Plaintiff WARD and ENGRAM Against BAKER, VASS, MORK and DOES 1-20, inclusive)

16 103. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 102 of
17 this Complaint.

18 104. The conduct of Defendant Officers BAKER, VASS, MORK, and DOES 1-20,
19 inclusive, as described herein, acting in the course and scope of their employment for Defendant
20 CITY, violated California Civil Code Section 52.1, in that they interfered with Plaintiffs' exercise
21 and enjoyment of their civil rights and failed to make a proper or reasonable search of Plaintiffs
22 WARD and ENGRAM.
23

24 105. As a direct and proximate result of Defendants' violation of Civil Code Section 52.1,
25 Plaintiffs WARD and ENGRAM suffered violation of their constitutional rights, and suffered
26 damages as set forth herein.
27
28

106. Since this conduct occurred in the course and scope of their employment, Defendant CITY is therefore liable to Plaintiffs pursuant to respondeat superior.

107. Plaintiffs are entitled to injunctive relief and an award of their reasonable attorney's fees pursuant to Civil Code Section 52.1(h).

WHEREFORE, Plaintiffs pray for relief, as hereinafter set forth.

JURY DEMAND

108. Plaintiffs hereby demand a jury trial in this action.

PRAYER

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For general damages in a sum of \$5,000,000.00;
2. For special damages in a sum according to proof;
3. For punitive damages in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For injunctive relief pursuant to California Civil Code Section 52.1, enjoining Defendant CITY OF OAKLAND from authorizing, allowing, or ratifying the practice by any police officer employee of Defendant CITY from conducting unreasonable strip searches against persons;
6. For violation of California Civil Code Sections 52 and 52.1, statutory damages, and reasonable attorney's fees;
7. For violation of California Civil Code Section 52(b), punitive damages against Defendant police officers, \$25,000.00 for each violation of California Civil Code section 51.7, and reasonable attorney's fees
8. For cost of suit herein incurred; and
9. For such other and further relief as the Court deems just and proper.

///

1 Dated: August 13, 2007

The Law Offices of John L. Burris

2
3 /s/ John L. Burris, Esq.

4 John L. Burris, Esq.

5 Attorney for Plaintiffs

6 Dated: August 13, 2007

Haddad & Sherwin

7 /s/ Michael J. Haddad, Esq.

8 Michael J. Haddad, Esq.

9 Attorney for Plaintiffs